

BEFORE THE PERSONNEL APPEALS BOARD

STATE OF WASHINGTON

ROBERT LAFONTAINE,)	Case No. DISM-98-0019
)	
Appellant,)	FINDINGS OF FACT, CONCLUSIONS OF
)	LAW AND ORDER OF THE BOARD
v.)	
)	
DEPARTMENT OF SOCIAL AND HEALTH)	
SERVICES,)	
)	
Respondent.)	

I. INTRODUCTION

1.1 Hearing. This appeal came on for hearing before the Personnel Appeals Board, WALTER T. HUBBARD, Chair; GERALD L. MORGEN, Vice Chair; and LEANA D. LAMB, Member. The hearing was held at West Seattle Training Center in Seattle, Washington, on February 8, 2000.

1.2 Appearances. Appellant Robert LaFontaine was present and was represented by Andy De Los Angeles, shop steward. Respondent Department of Social and Health Services was represented by Colin Jackson, Assistant Attorney General.

1.3 Nature of Appeal. This is an appeal from a disciplinary sanction of dismissal for neglect of duty, inefficiency, insubordination, gross misconduct and willful violation of published employing agency or department of personnel rules or regulations. Respondent alleges that Appellant failed to complete an investigation of alleged child abuse and was absent from work on two occasions without prior approval.

1.4 **Citations Discussed.** WAC 358-30-170; Baker v. Dep't of Corrections, PAB No. D82-084 (1983); McCurdy v. Dep't of Social & Health Services, PAB No. D86-119 (1987); Anane v. Human Rights Commission, PAB No. D94-022 (1995), *appeal dismissed*, 95-2-04019-2 (Thurston Co. Super. Ct. Jan. 10, 1997); Countryman v. Dep't of Social & Health Services, PAB No. D94-025 (1995); Rainwater v. School for the Deaf, PAB No. D89-004 (1989); Skaalheim v. Dep't of Social & Health Services, PAB No. D93-053 (1994); Aquino v. University of Washington, PAB No. D93-163 (1995); Holladay v. Dep't of Veterans Affairs, PAB No. D91-084 (1992).

II. FINDINGS OF FACT

2.1 Appellant Robert LaFontaine was a Social Worker 2 and a permanent employee for Respondent Department of Social and Health Services. Appellant and Respondent are subject to Chapters 41.06 and 41.64 RCW and the rules promulgated thereunder, Titles 356 and 358 WAC. Appellant filed a timely appeal with the Personnel Appeals Board on April 30, 1998.

2.2 By letter dated March 31, 1998, the Regional Administrator of the Division of Children and Family Services, Joseph G. Bell, Ph.D., informed Appellant of his dismissal effective April 15, 1998. Dr. Bell charged Appellant with neglect of duty, inefficiency, insubordination, gross misconduct and willful violation of the published employing agency or department of personnel rules or regulations. Dr. Bell specifically alleged that Appellant 1) failed to conduct an investigation into alleged child abuse and 2) was absent from work on August 27, 1997 and October 7, 1997 without authorization.

2.3 Appellant began his employment with the state in July 1984, and he became an employee with the Division of Children and Family Services (DCFS), Child Protective Services, in May 1988.

2.4 Appellant's performance evaluations from July 1994 to 1997 reflect that he primarily met the normal requirements of his position. However, Appellant's performance evaluations from 1992 to July

1 1994 indicate that he was failing to meet minimum requirements in a number of performance
2 dimensions, including accomplishment of job requirements, job knowledge and competence, and job
3 reliability.

4
5 2.5 Appellant's employment history indicates that he was demoted from his position as a Social
6 Worker 3 to a position as a Social Worker 2 effective May 16, 1997, in part, for failing to conduct an
7 investigation into an allegation of child abuse which had been referred to him in July 1995 and was
8 labeled as an emergent referral. It is undisputed that Appellant made no contact on the case for over a
9 one-year period.

10
11 2.6 The DCFS Practices and Procedures Guide establishes the response time for referrals labeled
12 "emergent" as no later than 24-hours from the referral date and time. The policy further states that
13 emergent cases require "the high standard of investigation" for children who are at risk of imminent
14 harm (significant possibility or likelihood that child may be seriously physically or emotionally injured
15 in the near future). In addition, the policy defines six levels of risk tags which are used to define the
16 seriousness of the allegations. Cases tagged as moderate to high risk also require "the high standard of
17 investigation." Cases being investigated under "the high standard of investigation require the social
18 worker to conduct a face-to-face interview with the child victim within 10 working days from the date
19 of referral to gather information for risk assessment and case planning. Appellant was aware of and had
20 received training on the DCFS policies and practices, case management and child abuse investigations,
21 and he had hands-on experience conducting investigations. Appellant's primary responsibility as a
22 Social Worker 3 was to ensure the safety and health of children by conducting complete and thorough
23 investigations of alleged child abuse and neglect.

1
2 ***Failure to Conduct Investigation***

3 2.7 On January 22, 1997, Appellant was assigned a case of suspected child abuse regarding child
4 A.B. The case was labeled as “emergent” and risk tagged at a 3 (moderate risk) and required Appellant
5 to conduct a face-to-face interview with the child within 10 days of the referral date. In this case, there
6 were visible marks on the child which were considered serious in nature but not life-threatening.

7
8 2.8 On August 25, 1997, Robert King, who was a supervisor in Appellant’s unit, was informed by a
9 CPS employee that Appellant had failed to make face-to-face contact on the CPS referral involving A.B.
10 Mr. King contacted A.B.’s mother, who informed Mr. King that although Appellant had contacted her in
11 January 1997 to tell her that he was on his way to her house to speak to her and the child about the
12 referral, he never arrived and she never heard from him again.

13
14 2.9 On September 2, Mr. King initiated a Personnel Conduct Report (PCR) alleging that Appellant
15 had failed to make the required face-to-face contact with child A.B. and the child’s mother. Appellant
16 did not file a response to the PCR and Faye Bates, Area Manager, entered a finding of misconduct.

17
18 ***Unauthorized Absences***

19 2.10 On August 7, 1997, Appellant was absent from work without prior approval and without
20 informing his supervisor of his whereabouts. Mr. King issued a memo to Appellant entitled, “Your
21 schedule and work activities.” The memo reminded Appellant that his work hours were from 8 a.m. to 5
22 p.m., Monday through Friday. Mr. King directed Appellant to obtain Mr. King’s, or his designee’s,
23 approval prior to leaving the building at any time other than his lunch and break times.

24
25 2.11 On August 27, 1997, Appellant left work at approximately 12 p.m. and he remained absent from
26 work for the rest of the day. Appellant did not have authorization to be absent from work beyond his

1 lunch period between 12 p.m. and 1 p.m. and he did not inform his supervisor or other staff of his
2 absence. On September 2, Mr. King initiated a PCR alleging that Appellant left for lunch at 12 p.m. and
3 did not return to the office or return his pages. Appellant did not file a response to the PCR and on
4 November 26, Ms. Bates entered a finding of misconduct based on Appellant's failure to return to work
5 after his lunch break was over on August 27.

6
7 2.12 On October 7, 1997, Appellant was absent from work from approximately 1 p.m. to 5 p.m.
8 During this time period, Mr. King, the acting supervisor that day, noted Appellant's absence but was
9 unable to locate him. At approximately 5 p.m. that same day, Appellant returned to the office. When
10 asked by Mr. King about his whereabouts, Appellant responded that he had spent the afternoon
11 transporting a client.

12
13 2.13 On October 10, Susan Phillips, Appellant's first-line supervisor, inquired about his absence from
14 the office on October 7. Appellant responded that he been asked by another employee to help a client
15 obtain a medical coupon and that he had escorted the client on an errand. When Ms. Phillips contacted
16 the client, she discovered that Appellant had assisted the client the morning of October 7 and that
17 Appellant's whereabouts for the afternoon were still undetermined. When confronted by Ms. Phillips
18 about the inconsistency in his version of the events, Appellant admitted that he had not been truthful and
19 that he had been absent from the work site due to a personal matter.

20
21 2.14 On November 5, Ms. Bates, on behalf of Ms. Phillips, initiated a PCR against Appellant
22 regarding his unauthorized absence on October 7. On November 12, Appellant made a written response
23 to the allegation that Appellant stated he had worked on obtaining a medical coupon for a client at 2:15
24 p.m. on the afternoon of October 7, that he made a home visit to the client but that the client was not
25 home, and that he later gave a coworker a ride to work. On November 26, Ms. Bates made a
26 determination that Appellant was out of the work site on October 7 on personal business without

1 authorization and that his responses to both Mr. King and Ms. Phillip regarding his whereabouts were
2 untrue.

3
4 2.15 Dr. Joseph G. Bell was Appellant's appointing authority. In determining whether misconduct
5 occurred, he reviewed Appellant's work history, his prior demotion, and the results of the PCR
6 investigations. In addition, Dr. Bell met with Appellant at a pre-disciplinary meeting during which
7 Appellant acknowledged that he did not make face-to-face contact with child A.B. and that he was
8 absent from work on two separate occasions without prior authorization. Dr. Bell concluded that
9 misconduct had occurred.

10
11 2.16 In determining the level of discipline, Dr. Bell weighed Appellant's failure to perform an
12 investigation on a referral of alleged child abuse report against the division's fundamental mission to
13 provide for the safety and health of children. Dr. Bell also weighed Appellant's knowledge of the
14 agency's policies and procedures, the extensive training he had received, and his nine years of
15 experience with the division of Child Protective Services. Dr. Bell reviewed Appellant's prior demotion
16 which resulted from a similar incident in which Appellant failed to investigate a child abuse referral.

17
18 2.18 Dr. Bell determined that Appellant's complete failure to perform his duties created a risk for the
19 children he was responsible for protecting and created a liability for the agency. Dr. Bell concluded that
20 Appellant's misconduct was egregious, undermined the agency's ability to perform its mission and
21 warranted a serious penalty.

22
23 2.19 When reviewing Appellant's unauthorized absences, Dr. Bell considered the memo Appellant
24 received on August 7, 1997, which clearly set out the expectation that he was to remain at the work site
25 and to obtain supervisory approval for all absences. Dr. Bell concluded that Appellant's absences on
26 August 27 and October 7 were in total disregard of supervisory directives and agency policy. Dr. Bell

1 was also concerned with Appellant's untruthful remarks to his supervisors regarding his absence on
2 October 7. Dr. Bell concluded that Appellant's misconduct unexcused absences and dishonesty also
3 warranted disciplinary action. Dr. Bell ultimately concluded that termination was the appropriate
4 sanction.

6 **III. ARGUMENTS OF THE PARTIES**

7 3.1 Respondent argues that it has met its burden of proof in supporting the allegations that Appellant
8 failed to perform an investigation into a referral of child abuse which was assigned to his caseload and
9 that he was absent from work on two occasions without prior approval. Respondent argues that
10 Appellant did not adequately perform the duties of his position, that he was not trustworthy and that he
11 could not be relied upon to carry out the mission of the agency to protect children. Respondent argues
12 that Appellant's actions in failing to obtain authorization to be absent from work showed a blatant
13 disregard for supervisory directives. Respondent argues that Appellant exhibited a pattern of
14 misconduct, that the serious nature of his misconduct had a negative effect on the agency, and that his
15 misconduct warranted termination.

16
17 3.2 Appellant argues that his termination was retaliatory, that management's evaluations of his
18 performance were unfair, and that his most recent evaluation was not done in good faith. Appellant
19 asserts that Respondent failed to implement a corrective action plan to assist him in improving his
20 performance and that dismissal was too severe a sanction.

IV. CONCLUSIONS OF LAW

4.1 The Personnel Appeals Board has jurisdiction over the parties hereto and the subject matter herein.

4.2 In a hearing on appeal from a disciplinary action, Respondent has the burden of supporting the charges upon which the action was initiated by proving by a preponderance of the credible evidence that Appellant committed the offenses set forth in the disciplinary letter and that the sanction was appropriate under the facts and circumstances. WAC 358-30-170; Baker v. Dep't of Corrections, PAB No. D82-084 (1983).

4.3 Neglect of duty is established when it is shown that an employee has a duty to his or her employer and that he or she failed to act in a manner consistent with that duty. McCurdy v. Dep't of Social & Health Services, PAB No. D86-119 (1987).

4.4 Inefficiency is the utilization of time and resources in an unproductive manner, the ineffective use of time and resources, the wasteful use of time, energy, or materials, or the lack of effective operations as measured by a comparison of production with use of resources, using some objective criteria. Anane v. Human Rights Commission, PAB No. D94-022 (1995), *appeal dismissed*, 95-2-04019-2 (Thurston Co. Super. Ct. Jan. 10, 1997).

4.5 Insubordination is the refusal to comply with a lawful order or directive given by a superior and is defined as not submitting to authority, willful disrespect, or disobedience. Countryman v. Dep't of Social & Health Services, PAB No. D94-025 (1995).

4.6 Gross misconduct is flagrant misbehavior which adversely affects the agency's ability to carry out its functions. Rainwater v. School for the Deaf, PAB No. D89-004 (1989).

1
2 4.7 Willful violation of published employing agency or institution or Personnel Resources Board
3 rules or regulations is established by facts showing the existence and publication of the rules or
4 regulations, Appellant's knowledge of the rules or regulations, and failure to comply with the rules or
5 regulations. Skaalheim v. Dep't of Social & Health Services, PAB No. D93-053 (1994).

6
7 4.8 Respondent has met its burden of proving that Appellant failed to conduct an investigation of
8 alleged child abuse and that he failed to make contact with the child or the child's mother as required.
9 Respondent has proven that Appellant neglected his duty, was inefficient and willfully violated agency
10 policy when he failed to conduct an investigation or make the appropriate contact. Appellant's failure to
11 perform his assigned duties resulted in a vulnerable child remaining in a potentially abusive
12 environment. Appellant's misconduct was egregious, adversely affected the agency's ability to carry
13 out its mission and rises to the level of gross misconduct.

14
15 4.9 Appellant had a duty to be at his work station during his regularly scheduled work hours or to
16 obtain prior authorization to be absent from work. Appellant's absences on August 27 and October 7,
17 1997, violated Mr. King's August 7 memo of expectations. Furthermore, Appellant had a responsibility
18 to conduct himself in professional manner and to answer his supervisor's questions truthfully.
19 Respondent has met its burden of proving that Appellant neglected his duty, was inefficient, and
20 insubordinate and that his misconduct rises to the level of gross misconduct.

21
22 4.10 Although it is not appropriate to initiate discipline based on prior formal and informal
23 disciplinary actions, including letters of reprimand, it is appropriate to consider them regarding the level
24 of the sanction which should be imposed here. Aquino v. University of Washington, PAB No. D93-163
25 (1995).

1 4.11 In determining whether a sanction imposed is appropriate, consideration must be given to the
2 facts and circumstances, including the seriousness and circumstances of the offenses. The penalty
3 should not be disturbed unless it is too severe. The sanction imposed should be sufficient to prevent
4 recurrence, to deter others from similar misconduct, and to maintain the integrity of the program.
5 Holladay v. Dep't of Veterans Affairs, PAB No. D91-084 (1992).

6
7 4.12 Appellant was an experienced social worker who had conducted many other investigations. He
8 had received extensive training and was aware of Respondent's policies and procedures. Appellant's
9 failure to investigate the alleged abuse of child A.B., his unauthorized absences, his failure to follow a
10 supervisory directive, and his failure to answer questions truthfully, warrant a severe disciplinary
11 sanction. In addition, this was not the first time that Appellant neglected his duty to conduct an
12 investigation of alleged child abuse. Based on the totality and the seriousness of circumstances we
13 conclude that the dismissal is appropriate and the appeal should be denied.

14 **V. ORDER**

15 NOW, THEREFORE, IT IS HEREBY ORDERED that the appeal of Robert LaFontaine is denied.

16 DATED this _____ day of _____, 2000.

17
18 WASHINGTON STATE PERSONNEL APPEALS BOARD

19
20 _____
Walter T. Hubbard, Chair

21
22 _____
Gerald L. Morgen, Vice Chair

23
24 _____
Leana D. Lamb., Member